

## COURT OF APPEALS

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Timothy D. Ninham,  
Appellant,

Case No.: 24-AC-001

v.

Date: April 4, 2024

Tamara Van Schyndel,  
Oneida Casino Surveillance Department,  
Respondent.

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### INITIAL REVIEW DECISION

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This matter has come before Appellate Judges Diane House, Daniel Cornelius, and Chief Appellate Judge Patricia Garvey.

#### BACKGROUND

On October 9, 2023, the Appellant, Timothy D. Ninham (hereinafter “Ninham”) was terminated from his position with the Casino Surveillance Department for violation of Oneida Nation Policy and Procedure Manual (hereinafter “OPPP”) Section V.D.2.c.1) *Work Performance*; Section V.D.2.c.3) *Use of Property*; and Section V.D.2.c.4) *Personal Actions and Appearances*. Ninham appealed his termination to the Area Manager, Tamara Van Schyndel (hereinafter “Van Schyndel”). On November 13, 2023, Van Schyndel upheld the supervisor’s decision to terminate Ninham. Ninham appealed the Area Manager’s decision to the Trial Court. On February 5, 2024, the Trial Court upheld the Area Manager’s decision. On March 5, 2024, Ninham filed a Notice of Appeal with this Court.

#### ANALYSIS

Ninham alleges procedural irregularities exist due the Oneida Casino Surveillance Department’s failure to timely address his appeal. The Trial Court, upon hearing testimony from both parties, determined that the reasoning for the extended time for addressing of Ninham’s appeal was justified and due in part to Ninham’s own approved time off and twenty-five (25) day medical

leave. The Trial Court made a finding that all timeframes were met during Ninham's appeal process. We agree with the Trial Court's finding that Ninham did not meet his burden nor provide any evidence that the timelines in the OPPP were not met.

Ninham also alleges the Trial Court erred when it determined that Van Schyndel's failure to recuse herself in Ninham's appeal process was not a violation of his due process rights. The Trial Court determined that Van Schyndel's awareness and reporting of the incident to the Oneida Gaming Commission resulted from her being the supervisor in the chain-of-command on the date of the incident. Van Schyndel also provided testimony on 1) her non-involvement in Surveillance Director Jason King's decision to terminate and 2) her non-involvement in the investigation that was completed by the Digital Technology Services (DTS), the Oneida Casino Internal Security Investigator, and the Oneida Police Department as required per the Surveillance Department Guidelines SOPs. The Trial Court determined that Van Schyndel's actions were warranted in the Gaming Commission reporting and that Ninham's due process rights were not violated when she upheld the termination as the Area Manager. We agree with the Trial Court on both matters. Van Schyndel provided evidence on the record of her reporting responsibilities to the Oneida Gaming Commission for alleged data breach incidents. Her non-involvement in the termination decision and investigation also supports the Trial Court's finding that the Area Manager's decision was not clearly against the weight of evidence provided.

After review of the information contained in the Notice of Appeal and the decision of the Trial Court as the original hearing body<sup>1</sup>, it is determined that Ninham has not sufficiently alleged that the Trial Court's decision:

- 1) Violates applicable provisions of the Constitution;
- 2) Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or

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<sup>1</sup>The Trial Court exercised jurisdiction over employee grievances in accordance with Oneida Business Committee Resolution 03-13-19-C.

- 3) Is not supported by the substantial evidence on the record taken as a whole, nor has new evidence been presented that was unavailable at the time of the hearing, which, if available, may have altered the final decision.

#### DECISION

For the reasons set forth above, Ninham's appeal before this Court is DENIED. The decision of the Trial Court is AFFIRMED.

By the authority vested in the Oneida Judiciary, Court of Appeals, In Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this appeal is hereby **DENIED**. Dated this 4th day of April 2024, in the matter of Case Number 24-AC-001, *Ninham v. Van Schyndel, Oneida Casino Surveillance Department*.

***It is so ordered.***